

# Information rights report

## Quarter 4 2015/16

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## 1. Key Developments

Some key developments expected in the next quarter are:

- Adoption of the EU-US Privacy Shield by the European Commission
- Government consultation on revising FOI section 45 Code of Practice following the Burns Commission report on FOIA;
- Government decision on the legislative vehicle for implementing member state level elements of the GDPR and law enforcement directive;

## 2. Cross Sectoral Work

### 2.1 External guidance

In the last quarter we have published new guidance on the following areas:

- We consulted on an updated version of our privacy notices code of practice. The new code addresses the challenge of providing privacy information in a digital environment and how to develop clear and accessible notices.
- Updated guidance on direct marketing, taking account of recent enforcement cases and the recommendations of the Which? taskforce on nuisance calls.
- Updated guidance on the definition of environmental information, definition of public authority and charging for requests.
- Interim guidance on international transfers following the Schrems judgment of the Court of Justice of the EU. The guidance also covered the announcement of the EU-US Privacy Shield as the proposed replacement for safe harbour

Contact: Steve Wood/Jo Pedder

### 2.2 Technology

New guidance was published in the following areas:

- Using encryption – including on different scenarios and when encryption is an effective safeguard.
- Wi-Fi and location data – including on how individuals should be informed about Wi-Fi tracking and how to minimise the privacy impact.
- Updated guidance on IT security particularly focused on small business. The guidance now better aligns with the Government's cyber essentials scheme.

Work is also ongoing in the Article 29 working party technology sub group on a number of issues (the ICO chairs the group) – new opinions on Wi-Fi location tracking, employee monitoring and data portability will be published in the autumn.

The technology team have also completed a sweep of 21 mobile apps. In the ICO's lab the team installed and used each app, and analysed its network traffic. The key findings were highlighted in an ICO blog, highlighting failings such as apps using encrypted connections that did not check digital certificates adequately.

Contact: Simon Rice

## **2.3 Freedom of information**

In March 2016 the Independent Commission on Freedom of Information published its report. Alongside 21 recommendations it concluded 'that the Act is generally working well, and that it has been one of a number of measures that have helped to change the culture of the public sector'. The Information Commissioner welcomed the report.

The report reflected a number of the submissions that the Commissioner had made in his written and oral evidence. No proposals were made to remove the public interest test from the exemptions that protect policy information and internal discussion (sections 35 and 36), though the Commission did propose to clarify the scope of the exemptions and factors related to the public interest test. The Commission proposed that the veto provisions in the legislation were clarified to enable the veto to be used as Parliament intended, though this would be a veto of the Information Commissioner's decisions rather than judicial decisions. The Commission also found that introducing charges for FOI requests would not be a reasonable step.

The report also contained welcome support for outstanding recommendations from the post-legislative scrutiny in 2012, including a statutory time period for when public authorities wish to extend the time for compliance to consider the public interest test. It also made welcome findings on public authorities publishing better statistical information about their FOI compliance.

The Commission also highlighted the importance of the ICO receiving adequate funding.

The Government responded quickly to the report, indicating that they were not minded to introduce any legislative changes in response. The most likely step will be to revise the section 45 code of practice, including guidance about vexatious requests and publishing FOI statistics.

Contact: Steve Wood

## **2.4 Self assessment toolkit**

The self assessment toolkit aimed at SMEs was launched on 28 January and was instantly popular receiving 7,085 hits between 28 January and 10 February. Traffic peaked at 1,521 page views on 4 February, the day the e-newsletter went out. We also received positive feedback via Twitter and LinkedIn, and took the opportunity to conduct demonstrations of the toolkit at the DPPC.

Contact: Louise Byers

## 2.5 Customer contact service profile

Our Advice and Registration Services dealt with 204,000 Helpline calls and approximately 13,000 requests for advice in writing during this financial year.

We profile the way our customers use our services throughout the year to better understand and improve how our customers contact us. Some headlines for this year are:

- Approximately half our enquiries are from members of the public and half are from those we regulate.  
*This has been a very consistent feature of our services for a number of years.*
- Half our customers have visited ICO.org.uk before contacting us for advice.  
*This is an important feature of our service. Our website is a frequent first port of call for many of our customers, but it is important we continue to recognise that just as many customers want, and often need, to talk something through with us in person.*
- Approximately a third of our customers are small and medium sized enterprises.  
*We are keen to make it as easy as possible for SMEs to have access to quick and simple advice when they encounter information rights issues or are making information rights related plans. It's often a relatively infrequently visited topic for many SMEs but millions of citizens are employed by, or are customers of, these organisations.*
- 80% of our enquiries are about data protection, 15% PECR and 4% Fol.  
*This is again a very consistent feature of our services over many years.*
- 9 out of 10 enquiries are dealt with by our first point of contact with a customer.  
*Our priority is for our customers to get the information they need. If this means consulting with, or passing an enquiry to, a colleague who's better placed to deal with it, we encourage our staff to do this. However, we continuously train and develop our staff so that most things we are asked can be dealt with by the first person our customers make contact with.*

- 5% of our enquiries are sent to us in error.  
*Given the wide range of issues we deal with we believe this is a low proportion of misguided contacts. We do however work hard to make sure that our staff have a strong understanding of the issues most likely to cause a customer to contact us in error. We also review the information we provide online on a regular basis. The service we provide to these customers when directing them elsewhere is just as important to our reputation as our service to those who've found the people they need.*

## **Service Satisfaction**

As well as understanding who our customers are and what they need from us, we also want to make sure the quality of our service remains as high as possible. We regularly use independent researchers to survey satisfaction with our service against some key measures.

The headline results of our 2015/6 research of our Helpline service are summarised below. Of the calls surveyed:

- 100% were described as having taken the needs of our customers seriously.
- 98% of callers were satisfied their enquiry had been clearly understood.
- 98% of callers rated the knowledge of the person they spoke to as either 'very good' or 'good'.
- 99% of callers said they received a clear response.
- 99% of callers described the service as polite and professional.
- 97% of callers said they received a friendly service.
- When asked how helpful the service was, 95% of callers described it as helpful or very helpful.

We are delighted with what these results say about the service we are providing to a large number of customers with a wide range of information rights enquiries.

As well as taking a lot of reassurance from the results we will also be looking for opportunities to improve. Very early areas identified are:

- To look at the resourcing of the Helpline service at lunchtime. Calls made to the service at this time of day had a slightly increased

tendency to be described as feeling slightly more hurried. At this time of day we typically see an increase in calls and a reduction in available resource.

- The reason for the general helpfulness of the service being rated slightly below the other measures (although we are clearly not describing 95% satisfaction as negative), was because a small number of misguided callers felt they were given inadequate information to clearly signpost them elsewhere. This is an area we can review in the future.

At the time of writing the full qualitative analysis of the results is yet to be received. A thorough lessons learned exercise will be carried out as soon as we have this information available. We are also expecting the results of our customer satisfaction research for our written advice services during the next quarter.

### **Service Improvements**

We routinely review our service to make sure we remain relevant to the needs of our customers and are able to appeal to customers who may not have contacted us before.

Reflecting on the steadily increasing proportion of enquiries from SMEs, and the increasing tendency for enquiries to relate to potentially innovative uses of technology, we have started a project to develop increased industry and sector expertise in the service. 'Technology master classes' and increased briefing materials in this area will also be made available to help staff remain on top of relevant information rights technology developments.

We are also currently developing a range of new digital services for our website. The first of these was launched at the end of this quarter. It's a 'live chat' service which allows customers visiting the website to have a conversation, in writing, with a member of our staff using an instant messaging service. We will be looking to actively publicise the service once the initial pilot phase is complete, but early indications are that it will prove popular for customers who prefer to contact organisations in this way.

Paul Arnold  
Head of Customer and Business Services



### **3. Government and Society Sector**

#### **3.1 Data sharing proposals, including possible legislation**

We have continued to engage with the Cabinet Office on its plans to make better use of government data. In February they published a consultation on legislative proposals to improve data sharing in a number of specific areas including research and statistics; tailored public services; and counter-fraud and debt measures. We have also attended a number of open policy making workshops with civil society, central and local government to help develop the proposals and consider safeguards such as codes of practice and use of privacy impact assessments. We have also met the General Register Office to discuss their proposal for a permissive power to share births, deaths and marriage information. We have attended a workshop and provided advice to the Better Regulation Delivery Office who are producing data sharing guidance for regulators.

Outcome:

We can welcome the key guiding principles behind the Cabinet Office's consultation document, which include no building of new, large, and permanent databases or collecting more data on citizens; no indiscriminate sharing of data within government and no amending or weakening of the Data Protection Act. There is a proposed primary legislation requirement to consult the Information Commissioner on codes of practice that will reinforce DP principles and ICO guidance. The codes will require PIAs to be produced in line with ICO guidelines for each data sharing arrangement and be made available for public scrutiny. It is proposed that all the sharing or linking of data should be proportionate and data should be minimised to that necessary for the proposed uses. Some civil society groups have concerns about the proposals and a key consideration for us is whether safeguards set out in codes are sufficient.

Future work:

We shall continue to participate in the Cabinet Office's policy making programme and will respond in detail to their public consultation. We shall continue to provide advice to the BRDO on their data sharing guide.

Contact: Judith Jones, Jonathan Bamford, Sarah Clement

#### **3.2 Political parties and campaign groups**

As the EU referendum campaign gets underway the office has already started to receive complaints. Very often members of the public do not realise that campaign groups who register with the Electoral Commission are entitled to receive copies of the full electoral register and can use this

information for campaign purposes. The Electoral Commission has now chosen the two designated campaign groups: Vote Leave and Britain Stronger in Europe. We published a blog on 6 January 2016, reminding campaign groups and political parties that they must comply with the law. We have also been advising on a number of issues relating to other elections taking place in May.

**Outcome:**

We have engaged with the Electoral Commission to ensure that we provide accurate advice to the public on which organisations are entitled to receive access to the full electoral register. We have also had discussions with the Cabinet Office on electoral issues and they have agreed to a further meeting to discuss uses of the open and full registers.

**Future action:**

We shall continue to monitor any concerns and provide further advice or take enforcement action where appropriate.

Contact: Judith Jones, Viv Adams, Sue Markey

### **3.3 Charity fundraising**

As the office completes its investigation into fundraising practices, we are seeking to build up our engagement with the charity sector to be proactive in helping them understand their fundraising obligations as well as how to comply with the DPA. We have met the interim CEO of the new Fundraising Regulator to discuss future engagement and a draft MoU. We also responded to a consultation on their proposed Fundraising Preference Service (FPS), expressing concerns about the potential for confusion with the statutory Telephone Preference Service (TPS) and other non-statutory services such as the Mailing Preference Service (MPS). We also responded to the Charity Commission's consultation on their fundraising guidance in which we supported their focus on the primary responsibility of trustees for their charities' fundraising activities. We have met the RNLI and other charities who are keen to move to an opt-in model of consent. We have also met lawyers involved in advising charities and have spoken at a number of events on security.

**Outcome:**

We have established good initial contact with the new Fundraising Regulator's office and have given some well received presentations to charity groups.

Future action:

We are due to meet representatives of the Fundraising Regulator and the NCVO to discuss their FPS proposals. We shall continue to speak at events and engage with key stakeholders in the charity sector to ensure they understand their obligations and improve their fundraising practices.

Contact: Judith Jones, Richard Marbrow, Ian Inman

### **3.4 National Audit Office and government data**

We have met the National Audit Office who are undertaking a study into central government's approach to information assurance, primarily the Cabinet Office and CESG (the information security arm of GCHQ). This is particularly in light of the government's plans to digitise services and to evaluate the operation of the security classification scheme.

Outcome

We had a constructive discussion about central government and their departments' approach to information assurance and updated the NAO on the GDPR. We agreed that at the next meeting it would be useful if they could share the key findings of their study.

Future action:

We have agreed to continue contact, involving other specialists in the ICO as appropriate.

Contact: Jonathan Bamford, Judith Jones

### **3.5 HMRC employment history subject access requests**

REDACTED

## **4. Police, Justice and Borders Sector**

### **4.1 Police Use of Surveillance Technologies**

REDACTED

### **2.2 Police National Computer (PNC)**

REDACTED

### **2.3 Investigatory Powers Bill**

REDACTED

### **2.4 National Law Enforcement Databases Project**

REDACTED

### **2.5 Metropolitan Police Service**

REDACTED

## 5. Public Services Sector

### 5.1 Information governance workshop

In conjunction with Hartlepool Borough Council, we ran an information governance workshop for over 30 regional school staff which received excellent feedback.

We completed the final five workshops for the Local Medical Committees. Additionally in the health sector we worked closely with Ambulance Trusts where we undertook research in to information governance incident reporting logs, an audit, two advisory visits and online surveys. We are currently working to produce an awareness video and a co-branded campaign poster.

We completed six reports into integrated health and social care pioneer projects and conducted an information risk review of an FOI service shared by two district councils.

Contact: Louise Byers

### 5.2 High Profile Case - Care.data disclosure objections

Patients were offered the opportunity to object to Health and Social Care Information Centre (HSCIC) sharing their personal data with other organisations. This is known as a 'type two' objection. This option was provided through household leaflet drops and there is currently a pause given concerns over the process. Patients who acted on the leaflets informed their GP who would then 'flag' the objection in their electronic record. As full Care.data extraction was not initiated the 'flags' have not been received by HSCIC and therefore data flows to third parties are taking place irrespective of these. There has been media coverage of this and we have received a complaint from a civil society organisation.

Concerns have also been raised with us about what are known as 'type one' objections which stop data going to the Care.data programme. The concern is that the 'flag' not only blocks the data flow from the GP to HSCIC for its purposes but from the GP to any other organisation for anything other than a patient's direct care like health screening appointments.

Outcome:

The Commissioner has written to the Chair of the HSCIC about the 'type two' issue informing him that this is a matter of public concern and asked what actions are being taken to remedy the problem. A holding letter has been received. Enforcement have agreed an undertaking with HSCIC to

move to respecting objections but this has depended on directions from the Secretary of State which are at the point signature. The undertaking will be signed once these are received.

Future work:

Issues regarding what individuals could reasonably expect from the privacy notice information provided to them, what has actually happened, whether a breach had occurred and what actions need to be taken will be explored and communicated. The 'type one' issues around patient expectation and what is happening in practice are being explored.

Contact: Victoria Cetinkaya. Laura Booth (undertaking work)

### **5.3 Troubled Families (Evaluation and Mark 2)**

The expanded troubled families programme and the associated National Impact Study (NIS) have begun roll out. Whilst the programme is now running it remains controversial and many local authorities have still refused to provide data for the NIS as they do not believe they can do so in a compliant manner.

Outcome:

We continue to work with the Department for Communities and Local Government (DCLG) to communicate the issues and data protection implications. The Full Employment Bill may contain a new 'legal gateway' for the sharing of data for the troubled families.

A joint webinar with DCLG was a great success in dispelling myths and gaining understanding. Work with the I-network group and others revealed a need to understand the data flows and through this we have been introduced to a group of authorities who would be willing to discuss the issues and how they are planning to overcome them.

Future work:

We will provide a formal response to the Full Employment Bill consultation. We will be working with local authorities' representative bodies to assist organisations in understanding the information rights implications. We will be meeting with specific areas to identify what the key issues and data flows are in practice.

Contact: Stacey Egerton

## **5.4 National Data Guardian (NDG) Consent Review**

The Secretary of State for Health commissioned the NDG to review and produce a report detailing whether the NHS should offer an opt out of data being used for purposes other than direct care. We were asked to take part in the review panel.

Outcome:

Increased involvement with the panel has assisted us in ensuring that the DPA aspects of the process have been taken into consideration.

We have also ensured that the impact of the new GDPR has been factored into the considerations in order to 'future proof' any implementation process.

Future work:

We will maintain close working relationships with the NDG and her team. The report once accepted by the Health Secretary will be put out to public consultation. We will be required to give further input once the analysis of the results has been compiled.

We will continue to monitor progress and identify and influence key aspects and impacts.

Contact: Stacey Egerton

## **5.5 New Models of Care**

The present trend for increased data sharing to facilitate public sector transformation and integrated care continues. Numerous regional area multi agency sharing initiatives require our attention.

Outcome:

We have increased contact with the Local Government Association, Information Governance Alliance, Pioneer Programme Board and Centre of Excellence for Information Sharing.

Our presence at key workshops, conferences and panels in this area of work is enabling us to better understand the issues and to offer advice to minimise the impacts on information rights.

One area which has become an apparent issue is the use of IT products to facilitate sharing which may not be fully DPA compliant.

Future work:

Working with Tech UK and others we will explore the data processor issues and ensure our views are expressed and understood. We will be working with key stakeholders to continually monitor and identify areas of concern and improvement and to identify good practice. We will be encouraging representative bodies to produce sector specific guidance which incorporates our views. We will continue attending relevant panels and boards.

Contact: Andrew Rose

## **5.6 Citizens Jury**

We have assisted Manchester University in their research project to ascertain what the public think about the use of medical records. The vehicle they used was a citizen's jury.

Outcome:

Over the course of 6 months we have assisted in the setting up of the juries, the delivery and analysis and then in conjunction with the University we held a post jury workshop attended by senior level staff across health and social care to discuss the output and how to take the work forward.

Future work:

We will consider how best to use the output of the juries to enhance how we better inform citizens of their rights.

We will provide a blog post of the output of the jury from our perspective. It is also likely that other juries would be beneficial for other questions across different sectors.

Contact: Jonathan Bamford



## **6. Business & Industry Sector**

### **6.1 Outcomes reports and DRIPA audits**

We produced an outcomes report based on 10 visits to residential sales and lettings organisations.

The Communications Audit Team has now completed DRIPA audits on a number of CSPs, with the remainder planned before the end of the calendar year. The team is continuing to prepare for the ICO's future audit responsibilities under the Investigatory Powers Bill.

Contact: Louise Byers

### **6.2 Connected vehicles**

The introduction of connectivity equipment and services in new motor vehicles poses a number of data protection and privacy challenges which we envisage will require the ICO to increase its engagement with the automotive sector. Connectivity systems have already been made available in the UK by a number of major vehicle manufacturers, with more expected to follow. In other parts of the world, notably the US, drivers can choose from a far greater number of pre-installed and add-on systems, often with increased functionality.

The features provided by connectivity systems range from options to sync users' social media accounts with a vehicle's on-board computer, through to the ability for a car to contact the emergency services in the event of a collision or automatically book a service with an authorised dealer. Many systems also include remote tracking and locking features. This creates potential for vast volumes of personal data to be processed by vehicle manufacturers, including telemetry and vehicle diagnostic data, personal contact details, preferences and location information.

Whilst the systems offered by manufacturers will undoubtedly provide drivers with benefits, the volume and range of data processed, combined with the nature of used, lease and rental car markets, creates some fairly unique data protection challenges.

Outcome:

Our initial research has provided us with a better understanding of the technologies and associated issues that we need to take forward with industry.

Future Work:

We have been in contact with the British Vehicle Leasing and Rental Association (BVLRA) with a view to setting up a roundtable with its members. We also need to engage with motor vehicle manufacturers, as well as policymakers and other interested parties. We are also attending, and speaking at, a connected vehicles conference in April.

Contact: Garreth Cameron

### **6.3 GDPR roundtable events**

There is a significant demand from stakeholders wanting to better understand the implications of EU data protection reforms and the ICO's position on key issues. Building upon the listening event the ICO ran in January 2016, the Business & Industry Group have held a number of roundtable events with industry groups in order to better understand which provisions cause particular industries the most concern, and to determine their priorities in terms of advice and guidance output from the ICO.

We have run events with Ofcom, the Association of British Insurers, the British Bankers Association/Association of Financial Markets in Europe, techUK, the Internet Advertising Bureau (UK) and Incorporated Society of British Advertisers. In addition we have also participated in a webinar on GDPR and its impact on businesses which was hosted by the Confederation of British Industry.

Outcome:

We have recorded the feedback received from stakeholders, and have demonstrated that the ICO is a responsive regulator willing to listen, learn and engage with industry on these significant issues.

Future work:

We will feedback the views and comments received from stakeholders to Policy Delivery colleagues in order that these may be taken into account in the ICO's implementation plans.

Contact: Garreth Cameron

### **6.4 Competition investigation remedies**

The Competition and Markets Authority (CMA) recently completed two separate investigations into the energy industry and retail banking respectively. These investigations led to remedies being proposed to

address the issues found. The proposed remedies potentially impact on our information rights policy work, as through various means it is recommended that those who have been disengaged in the market are subjected to marketing and prompts to change their supplier or provider.

We responded in writing to each of the proposed remedies, as well as to an overarching consultation by the Department of Business, Innovation and Skills (BIS) on switching principles more generally. In addition, we also held meetings and have been in correspondence with the CMA to explore the proposals in more detail.

We published a statement following publication of the CMA's energy market investigation report and comments made in the media by their spokesperson which wrongly implied that we had agreed to the sharing of some customer data with all rival energy providers to encourage switching supplier.

Outcome:

We have made the CMA aware of the issues arising and have sought to publically clarify any misconception that may have arisen.

Future work:

We are continuing in our conversation with the CMA regarding this matter, taking into account further submissions they have made and seeking policy advice where appropriate. We are intending to undertake further work in the next financial year to continue to build our relationships with other regulators.

Contact: Garreth Cameron, Rick Syers, Abigail Saul

## **6.5 Internet of Things (IoT), big data, social scoring and algorithms**

Sectoral contact identified a number of developments and a paper reflecting these was considered at the ICO's Emerging Technologies PAAG setting out our observations on developments in the related areas of IoT, big data, social scoring and algorithms. For example services are now being offered to rate a person's reliability or creditworthiness using data from their social media accounts. This paper analysed some of the legal, practical and policy issues arising from new technologies and business models, and set out recommendations for further action.

#### Outcome:

The research undertaken has provided a clearer understanding of the issues and recommendations for action.

#### Future work:

The findings of the paper will be fed into the next iteration of the ICO's big data paper. As well as undertaking direct engagement with organisations concerned, we will also look to hold a policy conference to explore the issues in further detail with a wider range of stakeholders. We will also look to commission some research to gain a better understanding of the problems and explore potential solutions. The issue of social media scoring will be considered at the next ICO citizen reference panel.

Contact: Garreth Cameron, Alastair Barter, Darren Read

## 7. National Regions

### 7.1 Wales

#### 7.1.1 Wales Audit Office (WAO) – “Dare to Share” conferences

The WAO arranged two conferences on data sharing as part of its Good Practice Exchange programme, one in south Wales and one in north Wales. These were aimed primarily at managers and senior IG risk owners in the public and third sectors. Entitled “Dare to Share”, they focussed on the need to share personal data in certain circumstances in the public interest, and featured real life examples of both good and bad practice when sharing. We provided one of the keynote speakers and also ran interactive workshop sessions at each conference.

Outcome:

Both events were very well attended, and from our perspective were highly worthwhile as they cemented existing relationships, gave us opportunities to network with other significant IG managers and prompted ongoing conversations about data sharing.

Future work:

We will continue to build on good working relationships with the WAO and also with those with whom we have since had conversations and given advice to.

Contact: Anne Jones, Helen Thomas

#### 7.1.2 Launch of WASP (Wales Against Scams Partnerships) and its Charter

WASP is a partnership of organisations that are committed to keeping people in Wales safe from scams. The Partnership is led jointly by the Older People’s Commissioner for Wales and Age Cymru, and the ICO is one of the partners, with our PECR work particularly featuring in the WASP Action Plan.

The Partnership and its Charter were officially launched at the National Trading Standards Scams Team conference in Cardiff in March. We participated in this, raising awareness of the role of the ICO, and we also contributed to the cost of publishing the WASP Charter.

Future work:

We will continue our involvement in the Partnership, and also work with individual partners as necessary, for example Get Safe Online, with whom we have worked separately this quarter.

Contact: Anne Jones. Helen Thomas

### **7.1.3 WASPI project closure**

As from April 2016, Welsh Government funding for the WASPI information sharing programme will cease, and responsibility for it will pass to the NHS Wales Informatics Service, where it will be integrated into their agenda. We took part in a national conference arranged to celebrate the achievements of WASPI over the last decade, and which also looked forward to its future role within NWIS. We provided a keynote speaker and information stand as well as participating in the round table discussions.

Future work:

The regular liaison meetings held with WASPI will continue now with NWIS, although with some change of emphasis and format.

Contact:

Anne Jones, Dave Teague

### **7.1.4 Health sector activity**

A number of separate strands of work have continued with the health sector in Wales this quarter.

Following the findings of the IG training review we undertook last year, and input from Good Practice colleagues, we ran a half day DPA workshop with NHS Wales Procurement Managers, particularly looking at data controller / data processor issues and the governance implications of each.

At a strategic Wales-wide level, discussions at the Wales Information Governance Board included an update on data sharing between A&E departments and the Ambulance Service, the IG toolkit plans for Wales, the National Intelligent Integrated Auditing system (monitoring of inappropriate health record access), section 251 as it applies in Wales, the WASPI project closure and IGMAG developments.

IGMAG (Information Governance Management Advisory Group) is the national IG Managers group for the NHS in Wales. The group is making real progress revising the NHS Wales online IG training modules, developing a Wales wide approach to key IG policies and assessing options to upgrade and/or replace the CPiP assessment tool following the findings of our training audit last year. Our role in this group is to support IGMAG by attending meetings, providing advice and guidance as appropriate.

Future work:

Liaison work and provision of advice will continue on a regular basis.

Contact: Helen Thomas

## **7.2 Northern Ireland**

### **7.2.1 Improving and embedding effective information rights practice across the NI Utility Sector**

After clarifying the limited application of the Data Protection Act to the sharing of information pertaining to businesses by the Utility Regulator for Electricity and Gas NI (UREGNI), the opportunity was taken to provide the utility companies themselves with practical compliance advice on both data protection and direct marketing. This included a bespoke workshop focussing on privacy statements, consent, direct marketing and data sharing which was delivered to the NI electricity companies.

Future action:

It seems likely that a review may now take place of the existing codes of practice regarding both the licence arrangements for the companies with regard to information sharing, as well as the code on practice on marketing. The ICO will be liaising with both the UREGNI and the energy companies to assist with this process if necessary. In addition, as a result of improved engagement, we are considering the development of an MOU with the UREGNI.

Outcomes:

Improved information rights awareness and compliance throughout the NI Utility sector. Improved understanding of information rights compliance, and the enabling of more effective data sharing to assist and benefit both businesses and citizens across NI. Strengthened relationships with both the UREGNI and utility companies.

Contact: Shauna Dunlop

### **7.2.2 Enabling direct marketing compliance with NI Charity Sector**

Successful partnership working with NI Council for voluntary Action (NICVA), the umbrella group for the NI charity sector, to deliver the first quarter of a “#DataFriday” strategy. We have delivered three of the twelve planned workshop sessions covering “An Introduction to DP”, “Direct Marketing” and “Information Rights for Member-based organisations”. NICVA promote and advertise the sessions, arrange the venues and organise the sessions whilst we provide the content and assist with their promotion. We have also assisted the Charity Commission NI (CCNI) with a review of its guidance on direct marketing.

Future action:

We are organising a meeting with both NICVA and the CCNI regarding the legislative basis for charity fundraising regulation in NI. Work will continue as required to assist CCNI ensure understanding and compliance of both direct marketing and data protection across the sector. The #DataFriday Strategy will continue as planned throughout 2016/17.

Outcomes:

Improved understanding and compliance with direct marketing and data protection legislation across the charity sector. By combining both policy advice with interactive theory and practice through an overarching strategy, practice is improved both at an individual and operational level. This is further strengthened by the underpinning strategic objectives of the sector as a whole.

Contact: Shauna Dunlop, Rachael Gallagher

### **7.2.3 Assisting with effective, lawful information sharing practices**

We have provided guidance to Citizens Advice NI (CANI) on lawful data sharing practice and compliance with respect to external audit controls. Our advice was issued to operational staff, to standards and compliance management staff and to the strategic management board. As a result, issues were clarified and understood, and the external quality audit processes were completed. Subsequently, CANI initiated a review into data sharing practice across the CAB branch offices in NI. We commented on the review’s draft terms of reference and ensured that the twelve steps in our new guidance on the GDPR are included within it.

Future work:

To further assist with the CAB review, where required. We have asked to be kept informed as to the outcome also.



Outcome:

Improved data sharing compliance within the CAB network.

Contact: Shauna Dunlop, Rachael Gallagher.

### **7.2.3 Improving understanding of compliance of FOIA and EIR at Departmental level**

Following an enquiry from the NI Department for Culture, Arts and Leisure (DCAL) relating to a draft terms of reference for a multi-agency steering committee responsible for NI stadia, we identified issues which could lead to non-compliance with FOIA and EIR. Cognisant of local political issues, we provided advice on good practice for Committee Members/representatives.

Future action:

We will be attending the next steering committee to provide some good practice guidance on compliance with the legislation.

Outcomes:

By following up on the policy advice through direct engagement with the Department and committee members, the risk of non-compliance has been reduced.

Contact: Ken Macdonald, Shauna Dunlop, Rachael Gallagher

## **7.3 Scotland**

### **7.3.1 Children & Young People (Scotland) Act 2014**

This legislation continues to generate work for the SRO as the implementation date nears (31 August). Activity in which we have been involved includes: keynote presentations to national conferences and sector specific master classes on data sharing in compliance with the DPA; participation on Scottish Government and sector specific working/steering groups looking at implementation; liaising with the SPSO on signposting of complaints about data sharing and work with the voluntary sector on the data sharing provisions of the legislation.

Future Work:

Continued work with Scottish Government, providing advice and guidance on the outcome of the legal challenge currently being considered by the

Supreme Court. Continued high profile speaking engagements; and continued work with sector specific practitioners and the voluntary sector on data sharing in compliance with the DPA. Development of a MOU with SPSO on the associated complaints process.

Outcomes:

Raised profile of ICO as an authoritative source of advice and guidance; continue opportunities for engagement with a wide range of stakeholders.

Contact: Maureen Falconer/Ken Macdonald

### **7.3.2 Safeguarder Training**

Delivery of a series of DP awareness workshop to Scottish Safeguarders. Although Safeguarders have been in existence for some time, the Scottish Government has established a formal administration process by contracting the charity Children 1st to provide administrative support and organise relevant training events. A recent breach in respect of a Safeguarder brought the matter of data protection to the fore and the SRO was approached to assist in providing some DP training for Safeguarders.

Future Work:

Further sessions are to be arranged on an ad hoc basis throughout Scotland when the SRO has an engagement in specific areas outside the Central Belt.

Outcomes:

Raised profile of ICO as the Regulator of the DPA, as well as being an authoritative source of advice and guidance; continue opportunities for engagement with these specific stakeholders all of whom are data controllers in their own right.

Contact: Maureen Falconer

### **7.3.4 Integration of Health & Social Care**

Most of the work in this area has been on the data controller/data processor relationships within the new structures established in compliance with the Public Bodies (Joint Working) (Scotland) Act 2014. In one health board area specific legal advice was sought from the ICO and with the assistance of our in-house solicitors, we were able to provide a definitive view on the matter which was accepted and implemented by all parties.

Future Work:

None

Outcomes:

Raised profile of ICO as the Regulator of the DPA, as well as being an authoritative source of advice and guidance; good cross-organisational working embodying the 'One ICO' concept.

Contact: Maureen Falconer

### **7.3.5 "Part 7" Network**

The "Part 7" network is a grouping of FOI professionals in the Scottish NDPBs listed in Part 7 of the Schedule to the FOISA and is facilitated by the Office of the Scottish Information Commissioner. Although focussed on FOI, the ICO were invited to speak to the group on Data Protection Day. Topics of conversation included Safe Harbor, the General Data Protection Regulation, the Reuse of Public Sector Information Regulations and the surveillance cameras code of practice.

Future Work:

The Network has decided to extend their meetings so they can spend half the day looking at data protection matters and the ICO will have a standing invitation to attend. The next meeting is scheduled for 9 May 2016 where we will lead the discussion on data sharing practices.

Outcomes:

Increased opportunities for engagement with a wide range of public sector stakeholders, particularly in the lead-in to the implementation of the GDPR.

Contact: Maureen Falconer / David Freeland

## 8. International

### 8.1 International transfers to US

In October the European Court of Justice invalidated the European Commission's decision on the safe harbour framework for transfers of personal data from the EU to the US. Following the judgment the Article 29 Working Party called for the European Commission and USA authorities to conclude their discussions on a replacement for safe harbor by the end of January. Whilst Article 29 were assessing the position at their February meeting the European Commission announced that they had completed negotiations with the US on the replacement for safe harbour – the EU-US privacy shield. Article 29 released a statement welcoming the conclusion of negotiations and they would now provide the Commission with advice on the adequacy of the protections provided by the shield, as required by Article 30 of the Directive.

In February the ICO published a blog and updated guidance for data controllers explaining what steps they could take in the interim and that it would be possible for controllers to continue to use other transfer tools such as binding corporate rules and standard contractual clauses.

The Article 29 Working Party published an opinion on the privacy shield decision following their meeting in April. It recognised the improvements offered by the shield compared to safe harbour but highlighted concerns about the commercial and national security aspects of the shield. Article 29 urged the Commission to address these concerns and seek solutions.

The Commission will now have to assess these concerns, in discussion with the US authorities. The Member States, in the Article 31 Committee, have to vote on the shield as well (Article 29's role is advisory). Following a positive vote the Commission may then issue a final adequacy decision on the shield. At present the timetable for next steps is unclear as it will depend on the extent of new negotiations between the EU and US.

Contact: Steve Wood

### 8.2 European Data Protection reforms

In December 2015 the EU institutions reached political agreement on the texts of the General Data Protection Regulation (GDPR) and the Directive on data protection and law enforcement. After final checks the formal texts are likely to be published in June 2018, which will then trigger a two year implementation period.

In January 2016 we ran a stakeholder workshop on the EU Data Protection reforms, listening to views of stakeholders on the challenges of

implementing the legislation, what guidance should be prioritised and how the ICO could best enable compliance. Around 100 organisations attended.

In March 2016 we launched our microsite [www.dpreform.org.uk](http://www.dpreform.org.uk) and a guidance document setting out 12 key steps organisations could take to prepare for the GDPR.

The Article 29 working party has published an action plan for GDPR implementing during 2016. This covers areas such as:

- Transition of Article 29 into the European Data Protection Board – governance and operation;
- Guidelines and procedures on how the new consistency mechanism for cross border cases will work e.g. how data protection authorities will decide on fines in cross border cases.
- Development of new guidelines for data controllers and processors on the GDPR;

Contact: Steve Wood

### **8.3 International conference**

In March the ICO hosted this year's Annual International Enforcement Event held under the umbrella of International Conference activities. More than 30 delegates from over 20 authorities around the world participated in a series of workshops and discussion sessions to further practitioners' understanding of how to make international enforcement cooperation work in the privacy regulatory community. The event explored several case-studies of how authorities have readied themselves to progress a cross-border enforcement approach with their partner authorities around the world.

Contact: Hannah McCuasland

## 9. Enforcement

### 9.1 Anti-Spam Investigation Teams and Intelligence Hub

In this quarter we issued eight civil monetary penalties totaling £930,000 for contraventions of the Privacy and Electronic Communication Regulations (PECR), bringing to 18 the number of monetary penalties issued for unlawful marketing activities this year with a total of £1,985,000.

The largest fine in this period – and the ICO's largest ever - was £350,000 against Prodiat Ltd for making 46 million unsolicited automated marketing calls. We also issued two fixed penalties against Vodafone and Talk Talk for failing to report personal data breaches within the required time limit.

We served six Enforcement Notices against; Advanced VOIP Ltd, Preferred Pensions LLP and Money Help Marketing Ltd for instigating unlawful marketing communications. These were all connected with a search warrant executed by the ICO in June last year. Direct Choice Home Improvements, Falcon and Pointer and FEP Heatcare Ltd all received Enforcement Notices to accompany monetary penalties they received.

HELM Ltd withdrew their appeal against their monetary penalty of £200,000. UKMS Money Solutions Ltd's appeal to the First Tier Tribunal against a penalty of £80,000 continues.

We have issued 82 third party information notices in this quarter. Most of the monetary penalties issued since April 2015 rely on evidence obtained or corroborated by use of the third party information notice, and they remain an essential investigative tool.

We have issued 37 Network Interoperability Consultative Committee (NICC) traces this quarter. This is another essential investigation tool. A NICC trace was used to identify the marketing company in the Direct Security Marketing Ltd CMP of £70,000 in February 2016.

We continue to explore pro-active opportunities, using intelligence obtained from our regulatory activities. We spotted a new opportunity and in early March we wrote to a number of utility companies making enquiries about how they were acquiring and using consent from their customers. The findings will be used to inform education and awareness messages, and also intelligence gathering and enforcement opportunities.

We presented on a webinar to over 90 call centre managers about compliance with PECR and the Data Protection Act.

We monitored 8 organisations this quarter which we believe represent risks in relation to adherence to PECR. We held 4 compliance meetings with organisations in order to improve direct marketing practices. Following our investigation into allegations raised in the Daily Mail, two charities, British Red Cross and Age International – signed Undertakings committing their organisations to best practice in acquiring and retaining consent from supporters. We found no evidence of serious contraventions by the two organisations.

As a result of investigations into compliance with the Privacy and Electronic Communication Regulations, we may identify criminal breaches of related law. We have two prosecutions ongoing under the Data Protection Act – one for section 17 (registration) offences and a section 47 (failure to comply with notice) prosecution against another organisation.

Work has been completed in preparation for the 2016 Global Privacy Enforcement Network (GPEN) Sweep, which will take place from 11 to 15 April. The Sweep will be the first one which is coordinated and led by the ICO on its own. Around 30 countries will be involved. Making sure the sweep is conducted effectively – and with clear privacy rights based outcomes - is a challenge but also a great opportunity for the ICO.

The Sweep topic agreed by the international participants is the 'Internet of Things', focusing on accountability. Organisations will be encouraged to look at the privacy information on websites of organisations, contact them to ask further questions and, where resources allow, purchase devices to look at the personal information collected. The aim is for findings to be published in quarter two of 2016-2017.

The first London Action Plan (LAP) Executive Committee meeting was held in January, with representatives from regulators in Canada, the US, the Netherlands, New Zealand and the UK meeting at the ICO. The Executive Committee finalised the LAP's operational plan for 2016-18. We are also planning the first ever LAP Sweep in 2016, aimed at tackling spam, which will be led by the ICO and Canadian CRTC.

We have published the quarterly data security incident trends report as well as the monthly nuisance calls and messages threat assessments on our website. We routinely shared intelligence with other regulatory and law enforcement organisations to support our enforcement activity.

We have developed new relationships by signing Memoranda of Understanding with the Charity Commission, CERT-UK (Computer Emergency Response Team) and LAP participants during the previous quarter.

We are working to agree a Memorandum of Understanding with the Fundraising Regulator, which is the self-regulatory body responsible for making sure charities fundraise within the law.

We published a report on our 'mystery shopping' project – Operation Bowler. This work helped to further our understanding of organisations using and sharing consumer data to send unsolicited communications. We will now use this way of working on an ongoing basis to provide intelligence and enforcement opportunities.

We presented at a Competition and Markets Authority event looking at more effective ways to cooperate and share intelligence with other national and international regulatory bodies. We also hosted a visit from the Dutch consumer authority (ACM) to compare approaches to enforcement under the e-Privacy Directive.

We have sought to improve our intelligence gathering and analysis capabilities through implementation of new analytical software and associated training for all team members. We have also started to receive information via a new 'Tell Intel' email address, created for staff to flag information rights issues they may encounter.

We organised and participated in the International Enforcement Co-operation Event in March, at which a meeting of GPEN also took place. The delegate sessions focussed on practical use of the International Enforcement Handbook (developed by the UK and Canada with international input), by considering cross-border scenarios of contraventions. Feedback will be used to inform amendments to the Handbook.

We are recruiting two additional Intelligence Officers to support the increasing demand for the support provided by the ICO's Intelligence Hub.

### **1<sup>st</sup> Quarter 2016-17**

We will continue to prioritise our investigations and activities to maintain focus on effective enforcement of the PECR, targeting unlawful activities by lead generation organisations.

We will continue to report on our investigation of charities and whether they contravened the Data Protection Act and the PECR.

We will deliver the international GPEN Sweep 2016.

Working with the CRTC we will continue to lead planning for the first ever LAP Sweep.



## 9.2 Civil Investigation Team

The intake and closure of cases in Q4:

	Total
Cases in Q4	402 (total for the year 1,713 in Civil – 1,954 in total including IP)

	Total
Cases out Q4	319 (total for the year 1,541 in Civil – 2,051 in total including IP)

Across the year, the team achieved a total case closure rate of 1,541. This compares with 1,081 in 2014/2015 and represents the closure of an additional 460 cases, despite the increase in receipts.

362 cases are under active investigation at present, an increase of 39 cases from Q3. The team continued to pursue a reduction in the number of cases awaiting allocation during Q4 and by the end of March, there were just 31 cases waiting to be assigned. The new triage process, combined with the efficiencies achieved from splitting the team by sector continues to play a significant role in this.

In total, the team risk assessed over 2,000 cases in 2015/2016, with a number of those being allocated to PID Operational Teams in line with Project Eagle.

### Sector trends – *top ten*

Health	200
Local Gov	43
Education	39
Gen Business	39
Charities	25
Solicitors/Barristers	25
Police & Crim records	18
Housing	16
Lenders	12
Financial Advisors	11

**\*this is derived from all cases risk assessed by the team – and includes those transferred to PID sector teams**

The most significant work stream for DPA breaches continues to be the Health sector. In the fourth quarter and as a percentage of the total intake of cases, health accounted for 41% of all those risk assessed, as was the case in Q3.

In common with our experiences in 2014/2015 and in the first, second and third quarters, Local Government continues to be a significant sector for intake. In Q4 just under 9% of the total intake related to the Local Government sector. The decreased intake for the Local Government sector over Q3 has reversed, but not to a significant degree.

In Q3, we reported on the 62% increase in intake from the General Business sector. This increase has stalled, with receipts for Q4 falling nominally by six cases.

We continue to monitor the situation and to identify new incident trends and threats and to target our activity appropriately.

### **Monetary Penalties and formal regulatory action cases**

In January 2016, an **Enforcement Notice** was issued to the **Alzheimer's Society** after serious failings in the way volunteers handled sensitive personal data were uncovered. The Notice required the charity to take a number steps, including improvements to staff and volunteer training and to the implementation of secure methods of communicating data. The notice is currently subject to appeal.

REDACTED

In March 2016, **Undertakings** directing the data controllers to improvements in compliance were issued to the **South Eastern Health and Social Care Trust** following a number of disclosure in error incidents; and to the Chief Constable of **Wiltshire Constabulary** after an investigation into the loss of a file containing personal data revealed shortcomings in the organisations staff training.

We issued four **Notices of Intent** during the fourth quarter – all of which are presently out for representations.

REDACTED

### **Other significant activity**

We represented the Enforcement Department at the annual DPPC conference in March, hosting a session on a data controller's experience of a data breach and subsequent monetary penalty.

We organised and participated in the International Enforcement Co-operation Event in March, at which a meeting of GPEN also took place. The delegate sessions focussed on practical use of the International Enforcement Handbook (developed by the UK and Canada with international input), by considering cross-border scenarios of

contraventions. Feedback will be used to inform amendments to the Handbook.

### **1<sup>st</sup> Quarter 2016-17**

In April, the Civil Investigation Team will deliver a session on cybersecurity at the Small and Medium Size businesses (SME's) conference in Birmingham. A total of four sessions will be delivered, and it is hoped that the compliance advice provided will assist delegates in preventing such incidents, with an emphasis on SQL injection attacks.

REDACTED.

### **9.3 Criminal Investigations Team**

The professional development of the Criminal Investigations Team continued with the delivery of disclosure training in early January. In the same month members of the team also attended a professional development seminar in respect of the acquisition of Communications Data under the Regulatory Investigatory Powers Act (RIPA) and the role of the SPoC. This theme will continue with the delivery of the Advanced Certificate in Investigatory Practice from Quarter 1 2016/17.

REDACTED

The Group Manager assisted at an ICO listening event on the EUDPR, held in London on in January. Two members of the Team assisted at the Data Protection Practitioners Conference in early March whilst more team members were engaged at the International Enforcement Cooperation Event where they delivered a workshop based upon Operation Spruce.

### **1<sup>st</sup> Quarter 2016-17**

- We will progress Operation Spruce by driving performance through the completion of actions and submission of further files to the Legal team.
- We will continue to develop the team through the delivery of the Advanced Certificate in Investigatory Practice.
- We will increase the resilience of the Enforcement Department by delivering specialist training for an additional Telecom SPoC.
- REDACTED
- We will conduct our first proactive operation in April and schedule a further operation for Quarter 3.

### **9.4 Other enforcement activity**

REDACTED

## 10. Performance Improvement

As anticipated the final quarter of the year has been the most productive. Overall the year has seen an increase in the amount of data protection related concerns brought to our attention. Intake has been higher than expected, up 15% on last year. Receipts have outpaced closures, but we have been able to resolve more cases than ever before. We are now well placed to deal with this increased intake. Departments are fully staffed, and new recruits are becoming increasingly productive. Freedom of Information intake has again been higher than last year, but to a lesser extent, up by 4%. There has been a small shortfall in closures versus receipts. We have however issued a record number of formal FOI decision notices and expect to maintain current service levels into the new financial year.

Our data protection yearly receipts include over 370 new cases from individuals who had asked search engines to remove results about them under the current 'right to be forgotten'. During the year we made 459 decisions about search engine results. Of those which were valid for a decision, we have required search engines to delist results in around a third of cases.

Around a third of the cases we have received have related to criminal convictions in some way. We have not required delisting where the search results relate to recent or serious convictions, but in cases where a conviction has been minor and historic we have done so. We have also required delisting in a number of cases where search results relate to an individual's past working life but only if the information is no longer considered relevant or they are not a public figure. We do not generally require delisting of information relating to an individual's work if the information is more recent, and particularly if it relates to individuals or professions with a role that is public facing.

FOI monitoring continues. The Ministry of Justice was initially being monitored for the period 1 September 2015 to 30 November 2015. However, as there was not sufficient improvement during this time we advised MoJ that monitoring was to be extended for a further three months and obtained details of its improvement plan.

We continued to work closely with the Metropolitan Police Service, meeting with the Deputy Commissioner, Assistant Commissioner and Director of Performance Assurance in February 2016, to discuss FOI performance further. We expressed disappointment at a recent drop in performance as did those present. They explained they had committed more additional staff and would keep these there until performance was at an acceptable level.

The initiative we undertook to write to all NI Departments regarding FOI performance has proved a success. All Departments co-operated fully, with engagement being very positive, and welcomed. With the exception of one case, all Departments cleared all of their old overdue cases. We also continued to formally monitor DFPNI and work closely with them to improve their performance and are satisfied with the measures they have taken and efforts they are putting in. We asked Chris Graham if it would be possible to visit NI before he departs the ICO and he has agreed, the Departments have welcomed this.

The latest monitoring report recommended two new authorities for formal monitoring one of those will commence shortly; the other, a government department, made representations through its Strategic Liaison contact and after considering evidence of its most recent performance we have concluded it would not be appropriate to formally monitor at this time. We are also currently informally monitoring a local council and have asked another council to provide us with its latest performance figures as indications are that formal monitoring may be necessary.

The final quarter of the year also sees us reflect on the work carried out by the FOI appeals team. During the course of the year there were 275 appeals received (including 9 remittals) to the Information Tribunal. We dealt with 257 cases and successfully defended over 80% of the Commissioners decisions.